

EXHIBIT C – NASH V. JOWDY COMPLAINT

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Case assigned to:
D. 38 Maureen Duffy
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES- CENTRAL DISTRICT

Tyson Nash, Greg deVries,
Turner Stevenson, Mattias Norstrom,
Vladimir Tsyplakov, Bryan Berard, Steve
Rucchin, Brian Campbell, Darryl Sydor,
Dimitri Khristich, Sergei Gonchar, Michael
Peca, Jere Lehtinen, Jozef Stumpel

as individuals;

Plaintiff,

vs.

Kenneth A. Jowdy, an individual; and DOES
1 through 100, inclusive,

Defendants.

ABO 29
90,164
FILED
LOS ANGELES SUPERIOR COURT
JUN 18 2009
JOHN A. CLARKE, CLERK
[Signature]
BY AMBER LA FLEUR-CLAYTON, DEPUTY

CASE NO. BC416082

COMPLAINT FOR DAMAGES

- (1) BREACH OF FIDUCIARY DUTY
- (2) FRAUD
- (3) CONSTRUCTIVE TRUST
- (4) UNJUST ENRICHMENT
- (5) ACCOUNTING

DEMAND FOR JURY TRIAL

Plaintiffs complain and allege as follows:

1. Plaintiffs Greg deVries, Tyson Nash, Mattias Norstrom, Vladimir Tsyplakov, Brian Campbell, Bryan Berard, Steve Rucchin, Darryl Sydor, Dimitri Khristich, Sergei Gonchar, Michael Peca, Jere Lehtinen, Turner Stevenson, Jozef Stumpel, are, and at all times mentioned in this complaint, individuals resided throughout the United States and Canada. They all transacted business and were solicited by the defendant who operated his real estate investment business in Los Angeles County in

CIT/CASE: BC416082 LEA/DEF#:
RECEIPT # 08150307039
DATE PAID: 06/18/09 12:28:28 PM
PAYMENT: \$550.00
RECEIVED: 06/18/09 12:28:28 PM
CHECK: 06/18/09 12:28:28 PM
CASH: 06/18/09 12:28:28 PM
CARD: 06/18/09 12:28:28 PM

1 State of California.

2 2. Plaintiffs are informed and believe, and thereon allege, Defendant KENNETH A.
3 JOWDY ("Defendant JOWDY") is, and at all times mentioned in this complaint was, an
4 individual operating investment businesses in Los Angeles County in the State of
5 California. Specifically, JOWDY solicited professional hockey players and baseball
6 players to invest in land deals and then failed to execute even the most fundamental
7 elements of a business or development plan. JOWDY used the Southern California
8 region as one of his hubs of business operations.

9
10 3. Plaintiffs are ignorant of the true names and capacities of the Defendants sued herein as
11 DOES 1 through 100, inclusive, and therefore sue these Defendants by such fictitious
12 names. Plaintiffs will amend this Complaint to allege their true names and capacities
13 when the same have been ascertained. Plaintiffs are informed and believe, and on that
14 basis, allege that DOES 1 through 100, inclusive, are responsible in some manner for the
15 damages suffered by Plaintiffs alleged herein.

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17 4. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned herein,
18 each defendant herein conspired together, aided and/or abetted, operated and acted as the
19 agent partner, joint venturer, associate and/or representatives of each other (i.e. the other
20 defendants), and in doing the acts herein alleged, acted within the course and scope of
21 their authority as agents and/or representative, and with the knowledge, approval,
22 permission and consent of the other defendants.

23
24 5. JOWDY operated businesses at the following addresses in the Southern California area:
25 420 21st Street, Manhattan Beach, CA 90266; 5541 La Jolla Mesa Drive, La Jolla, CA
26 92037; 3333 East Spring Street, Long Beach, CA 90806.

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28 6. The Plaintiffs, all professional hockey players who were players in good standing in the

1 National Hockey League and invested various amounts with JOWDY, controlled entities
2 that held ownership in U.S. LLCs, which held ownership in another U.S. LLC, which
3 held ownership in a Mexican corporation, which owns beach front property in Cabo San
4 Lucas, Mexico.

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6 7. Specifically, two of the Plaintiffs (Jozef Stumpel and Jere Lehtinen) invested in Baja
7 Ventures 2006, LLC, which owns 38% of Diamante Cabo San Lucas, LLC, which owns
8 99% of the Mexican corporation Diamante Cabo San Lucas S.De. R.L.De. C.V. The
9 remaining twelve (12) Plaintiffs invested in CSL Properties 2006, LLC, which owns 8%
10 of Diamante Cabo San Lucas, LLC, which owns 99% of the Mexican corporation
11 Diamante Cabo San Lucas S.De. R.L.De. C.V.) The remaining 1% of Diamante Cabo
12 San Lucas S.De. R.L.De. C.V. is owned by JOWDY personally. The Plaintiffs invested
13 as follows:
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- 15 A. \$250,000 Dimitri Khristich 12.5% of the LLC.
- 16 B. \$250,000 Vladimir Tsyplakov 12.5% of the LLC.
- 17 C. \$200,000 Bryan Berard 10% of the LLC.
- 18 D. \$200,000 Michael Peca 10% of the LLC.
- 19 E. \$100,000 Tyson Nash 5% of the LLC.
- 20 F. \$200,000 Turner Stevenson 10% of the LLC.
- 21 G. \$100,000 Ethan Moreau 5% of the LLC.¹
- 22 H. \$100,000 Steve Rucchin 5% of the LLC.
- 23 I. \$100,000 Greg deVries 5% of the LLC.
- 24 J. \$100,000 Brian Campbell 5% of the LLC.

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¹ Not a named plaintiff.

- K. \$100,000 Sergei Gonchar 5% of the LLC
- L. \$100,000 Owen Nolan 5% of the LLC.²
- M. \$100,000 Mattias Norstrom 5% of the LLC.
- N. \$100,000 Darryl Sydor 5% of the LLC.
- O. Jozef Stumpel 5% of the LLC.
- P. Jere Lehtinen 5% of the LLC.

8. To manage these investments, JOWDY was paid a four hundred eighty thousand dollar yearly salary (\$480,000.00), plus all travel and entertainment expenses to be the steward of the Plaintiffs' capital. Plaintiffs allege JOWDY completely mismanaged the project from day one. He acted as the sole developer as well as the sole manager of the investment entity, but over a three (3) year period he did not produce even the most fundamental elements of a master plan development such as engineering drawings or preliminary utility infrastructure. Nevertheless, he and his employees, whom consisted primarily of childhood friends with no development experience whatsoever, spent over thirty-five million dollars (\$35,000,000.00) over a three (3) year period. One example is when JOWDY hired a childhood friend in 2008, who was a professional chef and was hired by JOWDY as the Food and Beverage Director, when there was not even a vertical structure on the property other than the construction trailer. JOWDY spent an average of 2-3 days per month on property over the last three years. There are further examples of mismanagement, breach of fiduciary duty, nepotism, and fraud on the investors.

9. Bill Najam (a non-practicing attorney) who is JOWDY'S Brother in Law, was also paid a five hundred thousand dollar (\$500,000.00) yearly salary plus all travel and

² Not a named plaintiff.

entertainment expenses. His role in the company and his related business activities have yet to be identified. Mr. Najam spent no more than a couple of months (collectively) on property over the last three years. Mr. Najam was in charge of the corporate governance and while under JOWDY's direction and control, received over eight million dollars (\$8,000,000.00) from a LLC in Hawaii. Mr. Najam failed to properly account for those funds and has placed the JOWDY investors in a vulnerable and compromised position.

10. Ken Ayers (the sole Project Construction Manager), was paid a four hundred thousand dollar (\$400,000.00) yearly salary plus all travel and entertainment expenses, yet spent a grand total of less than twenty (20) days on property (collectively) over a three (3) year period. At one point late last year, he asked a fellow employee how to dial Mexico from his office in CA. He was also employed full-time by the Bridges in Rancho Santa Fe, CA during his entire tenure at Diamante Cabo San Lucas and continues to be employed by the Bridges and most likely by Diamante and Legacy Properties (JOWDY's Parent Company) simultaneously.

11. Brian MacNamee, who was Roger Clemens' friend, trainer, and who was also accused of supplying Clemens and others with steroids (which are readily available over the counter in Mexico), was hired by JOWDY and employed by Diamante Cabo San Lucas as a favor to Clemens. MacNamee was hired as the Fitness Center Manager before there was even a dirt road accessing the property. He currently owns a fifty thousand dollar (\$50,000.00) Hummer which has been allowed to remain parked on the property for more than a year per JOWDY'S specific instructions.

12. JOWDY frequently spent hundreds of thousands of dollars from the company's accounts, as well as used company resources such as private jets which were purchased with investors' money, (some of who are plaintiffs in this case) to entertain JOWDY's close

1 personal friends; Roger Clemens, Reggie Jackson, Joe Morgan and Pete Rose (to name a
2 few), under the guise that these individuals would eventually purchase real estate in the
3 development. However, Clemens and even his wife were vocal and adamant that they
4 would never purchase property in the development. When asked about their interest in
5 the project, other professional athlete/friends of JOWDY's, who JOWDY entertained in a
6 similar extravagant fashion stated openly that they were not buyers either. Nevertheless,
7 JOWDY continued to provide, and these individuals all continued to accept, gratuitous
8 extravagant private air travel, five star hotel accommodations, luxury home rentals,
9 unlimited food and beverage expenses, golf tournaments and lavish parties, several times
10 per year over a three year period, all orchestrated by JOWDY and paid for using the
11 Plaintiffs' investment capital.
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14 13. JOWDY was solely responsible for inviting these individuals and was also responsible
15 for arranging for various female porn stars, escorts, strippers, party girls and other
16 women to attend these functions, again all paid for by the company. Clemens in
17 particular, was a regular participant in these activities and Adrian Moore (one of the
18 female attendees who was close to Clemens) was later hired by JOWDY, and employed
19 by Diamante, as JOWDY's personal assistant as a personal favor to Clemens.
20

21 14. JOWDY and childhood friend Mark Thalman, who was represented as being a pilot and
22 a self proclaimed aviation expert, purchased three (3) Airplanes using the Plaintiffs'
23 business manager Philip A. Kenner's and various National Hockey League Players'
24 (Kenner's clients) money through an entity named Diamante Air, LLC. JOWDY and
25 Thalman misappropriated and/or lost over two million dollars (\$2,000,000.00) of
26 investors' money through this entity and through the misuse of the airplanes. JOWDY
27 and Thalman have since defaulted on the two loans for the airplanes, which were
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- 1 guaranteed by Phil Kenner and Plaintiff Sergei Gonchar. The airplanes have since been
2 repossessed by 1st Source Bank. Until recently, when Kenner and Gonchar reached a
3 settlement at their considerable expense, Kenner and Gonchar were defending a lawsuit
4 filed by the bank for their personal guarantee as a result of JOWDY and Thalman's
5 negligent management of this entity. JOWDY and Thalman were the managing members
6 of this entity and Kenner and his clients including some of the Plaintiffs are filing a
7 lawsuit against JOWDY and Thalman regarding this entity. As a result of Kenner making
8 JOWDY and Thalman aware of the imminent filing of a complaint, JOWDY has
9 produced a document with only his signature on it, and now suggests that Kenner is also
10 a Managing Member of this entity and is therefore also responsible for its demise.
11
12 15. JOWDY constantly used the airplanes to fly himself and various friend/employees, as
13 well as several of the aforementioned professional athletes and female companions, to
14 Cabo San Lucas Mexico, El Rosario Mexico, Palm Springs, CA, La Jolla, CA, New York
15 City, NY and Las Vegas, NV (several times per year for approximately three years)
16 under the guise of company business.
17
18 16. JOWDY is the sole managing member of the Diamante Cabo San Lucas project. JOWDY
19 has contributed zero capital of his own into the project, yet he was successful in
20 manipulating a forty percent (40%) interest in the project. He borrowed one hundred
21 percent (100%) of the capital invested into the project on his behalf personally, directly
22 and indirectly from Kenner and various Hockey Players who are Kenner's clients and
23 who are now suing JOWDY for non-payment in multiple U.S. jurisdictions. These loans
24 are in excess of eight million dollars (\$8,000,000.00). Criminal fraud charges have also
25 been brought against JOWDY and an arrest warrant has been issued for JOWDY in
26 Mexico as a result. Furthermore, JOWDY is facing several labor disputes in Mexico
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1 which have been filed by former employees of the Diamante project who have placed
2 labor liens on the property in excess of two million five hundred thousand dollars
3 (\$2,500,000.00).

- 4 17. JOWDY has defaulted on various vendor, sub-contractor, supplier and joint venture
5 partner agreements, including but not limited to an agreement between the company
6 owned by Phil Mickelson, which was contracted to design one of the golf courses on the
7 Diamante Cabo San Lucas property. JOWDY entered into an agreement then used the
8 Mickelson name to promote and lend credibility to the project for the purposes of luring
9 in investors and buyers of property within the development. JOWDY has breached the
10 agreement with Mickelson's company, and as a result of JOWDY's actions, Diamante
11 Cabo San Lucas currently owes a substantial amount of money to Mickelson's company.
12
13 18. JOWDY falsified his financial statements as part of his loan application to Lehman and
14 acquired the loan from then Lehman employee; Masood Bhatti. Bhatti was responsible
15 for submitting JOWDY's loan application to Lehman, performing all of the necessary
16 due diligence and facilitating JOWDY's loan with Lehman for the Diamante Cabo San
17 Lucas project. Bhatti has since become a close personal friend of JOWDY's and is now
18 working closely with JOWDY to raise additional capital for the project. It is further
19 alleged that Masood Bhatti actually has a secret equity interest in the Cabo project which
20 we believe he was given by JOWDY, as a result of Bhatti approving the questionable
21 loan to JOWDY for Diamante. Bhatti's interest in the project is through an entity named
22 Somerset Trust which is owned by his god-daughter. The source of the funds for the
23 capital contribution reflected in the shareholder's agreement validating Somerset's
24 interest in the project has been untraceable to date. While Lehman held the note and
25 Bhatti managed the relationship between Diamante and Lehman, JOWDY allowed the
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1 loan to go into default. When the plaintiffs' appointed agent met with Bhatti, in an effort
2 to remedy the problems and protect their investment, Bhatti single-handedly interfered
3 and hindered said effort.

- 4 19. Due to the Lehman meltdown, a European bank by the name of Danske Bank has
5 acquired the Diamante loan. As a result of JOWDY's misleading representations to the
6 bank, with respect to the plaintiffs and their agents, the bank has isolated itself to dealing
7 with only JOWDY and has refused to communicate with the Plaintiffs or their agents
8 about significant developments of Diamante, in spite of the Plaintiffs' LLCs being co-
9 guarantors for the loan and the Plaintiffs being the only true equity investors. The
10 Plaintiffs and their agents have also been restricted by JOWDY from physically
11 accessing the property which they own.
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14 **FIRST CAUSE OF ACTION**

15 **BREACH OF FIDUCIARY DUTY**

16 **(Against Defendants JOWDY and DOES 1 to 100)**

17 Plaintiffs incorporate and reallege herein paragraphs 1 through 19 above, as if set forth in
18 full.

- 19
20 20. JOWDY owed Plaintiffs fiduciary duties resulting from the position of trust and owed
21 them a duty to make true and accurate statements to them. JOWDY breached that duty by
22 providing misleading, untrue, and inaccurate accounting of the proceeds received, the
23 direction of the development, the time period in which he would complete the project.
24 When in reality, JOWDY had no intention of performing any of his obligations as the
25 sole manager of the project. He lulled the Plaintiffs into not demanding their money back
26 and into believing he was effectively managing the project. It was not until he testified
27 under oath in an arbitration entitled Nolan vs. Kenner, Case No. 76 148 Y 00223 08
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1 DEAR on May 27, 2009, did Plaintiffs fully became aware through their agent the extent
2 of JOWDY's ethical and legal lapses as to their capital. They discovered that their capital
3 accounts were ZERO. They discovered the project was going nowhere. They discovered
4 that JOWDY had spent eight million dollars (\$8,000,000.00) of borrowed money from a
5 Delaware LLC, named Little Isle IV, without any accounting by Bill Najam who testified
6 in said arbitration that he was the custodian of records. They discovered that after
7 repeated requests, they would not be provided copies of the books and records to which
8 they were entitled. The only way to view the books and records was to travel to
9 Connecticut even though JOWDY operated out of California when he sold these
10 investments. They discovered that JOWDY had commingled funds in non-corporate
11 accounts, had no intention of allowing competent and capable professionals to intervene,
12 and had run out of money. At no time did they receive warning that JOWDY had spent
13 all of their capital on exorbitant salaries, private parties, junkets, and worthless
14 promotional events. JOWDY instead took all of that corporate opportunity and used it to
15 promote other projects in the United States that were not funded by the Plaintiffs.

18 SECOND CAUSE OF ACTION

19 FRAUD

20 (Against Defendants JOWDY and DOES 1 to 100)

21 Plaintiffs hereby incorporate by this reference as though set forth in full at this point,
22 each of the allegations contained in paragraphs 1 through 20 above.

23 21. JOWDY owed Plaintiffs fiduciary duties resulting from the position of trust and owed
24 them a duty to make true and accurate statements to them.

25 22. As more fully set forth above, JOWDY intentionally made the following material
26 misrepresentations and omissions of material fact to Plaintiffs and/or their agents:
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1. The project would be completed within three years.
2. The Plaintiffs' investment capital was secure.
3. The Plaintiffs would see a return of capital within four years.
4. The Plaintiffs would receive monthly written updates.
5. JOWDY would personally manage the project and be a competent guardian of the Plaintiffs' capital.
6. JOWDY would follow appropriate corporate governance.
7. JOWDY would make his decisions based upon the business judgment rule and not upon nepotism, favoritism, or other decisions which benefitted himself or his friends and family.

23. All of these representations were false, they all were made to the Plaintiffs' detriment, Plaintiffs' relied on these statements, and Plaintiffs suffered general, special, and exemplary damages as a result. JOWDY's conduct was willful, wanton, and showed a reckless disregard for the truth warranting punitive damages according to proof.

THIRD CAUSE OF ACTION

CONSTRUCTIVE TRUST AND APPOINTMENT OF RECEIVER

(Against Defendants JOWDY and DOES 1 to 100)

Plaintiffs hereby incorporate by this reference as though set forth in full at this point, each of the allegations contained in Paragraphs 1 through 23 above.

24. As a result of the conduct described above concerning all defendants and the resulting conversion of Plaintiff's assets, a constructive trust is required to be imposed on all monies or assets which Defendants have in their possession, custody or control to ensure that monies rightfully belonging to Plaintiffs are not dissipated.

25. In addition, in light of the theft of funds and commingling of assets, the Court should

1 order that all of Defendants' property and holdings be identified to an independent
2 receiver who can take over and manage the assets pending disposition of this litigation.

3 **FOURTH CAUSE OF ACTION**

4 **UNJUST ENRICHMENT**

5 **(Against Defendants JOWDY and DOES 1 to 100)**

6
7 Plaintiffs hereby incorporate by this reference as though set forth in full at this point,
8 each of the allegations contained in Paragraphs 1 through 25 above.

9 26. As a result of the conduct described above and the resulting conversion of Plaintiff's
10 assets, JOWDY should be ordered to disgorge all ill gotten gains resulting from the
11 above conduct.

12 **FIFTH CAUSE OF ACTION**

13 **ACCOUNTING**

14 **(Against Defendants JOWDY and DOES 1 to 100)**

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16 Plaintiffs hereby incorporates by this reference as though set forth in full at this point, each of
17 the allegations contained in Paragraphs 1 through 26 above.---

18 27. The Plaintiffs are spread out throughout North America and Europe. They are requesting
19 the Court order an immediate accounting prior to trial in this matter setting forth the
20 expenditures authorized by JOWDY.

21 **WHEREFORE**, Plaintiffs demands judgment against Defendants for the following:

22 **ON THE FIRST AND SECOND CAUSES OF ACTION:**

- 23
24 1. For general damages in the amount of twenty-five million dollars (\$25,000,000);
25 2. For punitive damages according to proof;

26 **ON THE THIRD CAUSE OF ACTION:**

- 27 3. For an imposition of a constructive trust and appointment of a receiver;
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1 **ON THE FOURTH CAUSE OF ACTION:**

2 4. For a disgorgement of all proceeds given to Defendants by Plaintiffs;

3 **ON THE FIFTH CAUSE OF ACTION:**

4 5. For an accounting of all proceeds invested.

5 **ON ALL CAUSES OF ACTION:**

6 6. For costs of suit


7 7. Prejudgment interest;

8 8. For any such further relief as this Court may deem just and proper in light of the
9 circumstances.

10 Dated: June 18, 2009

11 Respectfully submitted,

12 Law Offices of Ronald Richards & Associates, A.P.C.

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16 By: 
17 RONALD RICHARDS, Esq.
18 Attorneys for Plaintiffs
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